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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/091,882

03/06/2002

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12/08/2009

EXAMINER

MAGUIRE, LINDSAY M

ART UNIT

PAPER NUMBER

3693

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/091,882	Applicant(s) SINGHAL, TARA CHAND	
	Examiner LINDSAY M. MAGUIRE	Art Unit 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Non-Final Office action is in response to the application filed on March 6, 2002, the amendments filed on July 9, 2007, the Request for Continued Examination filed on December 6, 2007, the amendments filed on April 25, 2008, the Request for Continued Examination filed on October 27, 2008, the amendments filed on February 20, 2009, and the Appeal Brief filed on July 30, 2009.

Response to Appeal

In view of the Appeal Brief filed on July 30, 2009, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-23, 25-27, and 30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 18 and 30, the claim limitation “means for entering” uses the phrase “means for” or “step for”, but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because it is only preceded by a "wireless device" and not any other structure or acts to further define the language. It is noted that claim 18 also states, "means for sending," "means for identifying," “means for receiving,” and “means for sending,” and claim 30 recites, “means for origination” and “means for processing” it is unclear if these recitations contain sufficient structure, material, or acts for performing the claimed function.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or

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“step for” is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

Re Claims 19-21 and 25-27, applicant asserts that the claim elements “device notification means,” “customer identification means,” and “system notification means” are means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, it is unclear whether the claim elements are means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph, because the language is not modified by sufficient structure. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to:

(a) Amend the claim to include the phrase “means for” or “step for” in accordance with these guidelines: the phrase “means for” or “step for” must be modified by functional language and the phrase must **not** be modified by sufficient structure, material, or acts for performing the claimed function; or

(b) Show that the claim limitation is written as a function to be performed and the claim does **not** recite sufficient structure, material, or acts for performing the claimed

function which would preclude application of 35 U.S.C. 112, sixth paragraph. For more information, see MPEP § 2181.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,473,739 (Showghi et al. '739) in view of U.S. Pat. No. 5,933,812 (Meyer et al. '812).

Re Claim 18: Showghi et al. '739 disclose a payment system for restaurant merchants that provides privacy of customer bankcard data of a customer from a merchant system, comprising: a restaurant bill that shows a payment amount and a service code, the service code includes a merchant number identification to a central system that is separate from the merchant system (column 2, lines 56-67; column 5, lines 17-22; column 6, line 27 - column 7, line 8); a wireless device of the customer (22, 24, 26: Figure 2) with, (i) means for entering the service code, a payment amount (column 5, lines 17-22 & column 7, lines 43-55), and (ii) means for sending the data to the central system which pre-stores customer data and merchant data (i.e. wireless; Figure 2); central system means (16, 18) for identifying the customer and processing a

payment request from the customer to the merchant by retrieving customer and merchant data and submitting a payment transaction request to an existing payment authorization network (column 7, lines 43-55); central system means (16, 18) for receiving a payment approval record and sending payment approval notification to the customer on the wireless device (column 7, lines 43-55, i.e. acknowledges receipt of goods, acknowledges that the payment is going through); central system means for sending payment approval notification to the merchant system, wherein the central system having submitted the payment transaction request (column 2, lines 56-67), the payment system maintains privacy of customer bankcard data from the merchant system (column 7, lines 43-55; column 5, lines 32-38, i.e. through the internet service provider).

It is noted that the definition of restaurant according to Webster's II Dictionary is, "a place for serving meals to the public." Therefore, Showghi et al. '739 is considered to fully meet the limitation of "restaurant" as recited above, since it is clearly disclosed that meals/food are served to the public (Showghi et al. '739: abstract).

Showghi et al. '739 is considered to disclose the system substantially as claimed, as advanced above, with the exception of requiring the ability to enter an optional tip into the device. Meyer et al. '812 disclose a display that prompts a guest to enter a tip including a pair of function keys for selecting tip entry in the form of a % of the guest check total or a specific tip amount (Meyer et al. '812: column 3, lines 56-60).

Re Claim 19: Showghi et al. '739 in view of Meyer et al. '812 disclose the system in supra including further comprising: the central system stores (i) customer identification means, (ii) a plurality of customer bank account data and (iii) wireless device notification means (Showghi et al. '739: column 7, lines 43-47).

Re Claim 20: Showghi et al. '739 in view of Meyer et al. '812 disclose the system in supra including further comprising: the customer identification means using a personal number that is a combination of wireless device telephone number and a personal identification number that is entered into the wireless device (Showghi et al. '739: if the person is using therein own wireless device, i.e. 22, 24, 25, then their phone number is obviously contained within their personal number).

Re Claim 21: Showghi et al. '739 in view of Meyer et al. '812 disclose the system in supra including further comprising: the central system stores merchant identification that identifies the merchant to a payment authorization network and merchant computer system notification means (Showghi et al. '739: column 5, lines 29-32; column 7, lines 43-55).

Re Claim 22: Showghi et al. '739 in view of Meyer et al. '812 disclose the system in supra including where the service code, further comprising: the service code includes in addition to the merchant number identification (Showghi et al. '739: i.e.

venue code), a table number (Showghi et al. '739: i.e. seat number) and a server number (Showghi et al. '739: i.e. delivery person).

Re Claim 23: Showghi et al. '739 in view of Meyer et al. '812 disclose the system in supra including further comprising: the payment approval notification to the merchant system includes the table number and the server number enabling a display terminal interfaced to the merchant system to display payment status data that includes a date and time (Showghi et al. '739: column 5, lines 17-22), a transaction reference (Showghi et al. '739: column 2, lines 56-67), the table number (Showghi et al. '739: i.e. seat number), the server number (Showghi et al. '739: i.e. delivery person), the payment amount (Showghi et al. '739: column 2, lines 56-67), tip (Meyer et al. '812: column 3, lines 56-60) and a payment status (Showghi et al. '739: column 4, lines 20-24; column 7, lines 43-55).

Re Claims 24-29: Method claims 24-29 are substantially similar to previously rejected system claims 18-23, and therefore the same rejections are applied here using the same art and rationale.

Re Claims 30-32: Method claims 30-32 are substantially similar to previously rejected system claims 18, 22, and 23, and therefore the same rejections are applied here using the same art and rationale.

Response to Arguments

Applicant's arguments with respect to claims 18-32 have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that Showghi is directed to connivance and not to protection, however examiner maintains the position that while Showghi doesn't explicitly intend to function as consumer protection, that does not mean that it does not provide those functions. Showghi prevents a merchant from handling the consumer's credit/debit card and therefore performs the same functions as applicant's invention.

Applicant's arguments that Showghi does not show a central system, are acknowledged, however examiner is of another opinion. Specifically, Showghi et al. '739 discloses a central processing center (column 3, lines 25-27). Therefore, Showghi et al. '739 is considered to fully meet the aforementioned limitations of the claims.

Applicant's arguments that, "the Showghi identification code is inherently different than the service code of the claims 18, 24, and 30" are acknowledged, however examiner is of another opinion. Specifically, the service code of Showghi et al. '739 does identify the merchant to the central system (Figure 2; column 2, lines 56-67; column 5, lines 17-22; column 6, line 27-column 7, line 8). Therefore, Showghi et al. '739 is considered to fully meet the aforementioned limitations of the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to re t whose telephone number is (571)272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lindsay M. Maguire
12/4/09
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Examiner, Art Unit 3692